



STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

2010-098

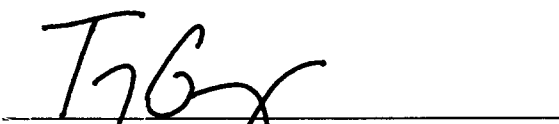
Secretary of State
Frankfort
Kentucky

February 9, 2010

By virtue of the authority vested in me by Section 12.210(1) of Kentucky Revised Statutes and as Governor of the Commonwealth of Kentucky, I, Steven L. Beshear, do hereby approve an employment contract between **Conliffe, Sandmann & Sullivan**, Louisville, Kentucky and the **Personnel Cabinet** as lined in the attached contract.

Please enter this Executive Order upon the Executive Journal and file the attached Contract with the Executive Order.


STEVEN L. BESHEAR
Governor


TREY GRAYSON
Secretary of State

RECEIVED AND FILED

DATE 2/10/10

TREY GRAYSON

SECRETARY OF STATE

COMMONWEALTH OF KENTUCKY

BY R. Haller



Commonwealth of Kentucky

CONTRACT

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: Legal Counsel for KHRIS contract dispute	
Doc ID No: PON2 790 1000001255 1	Procurement Folder: 1687530
Procurement Type: Personal Service Contract	
Administered By: Walt Gaffield	Cited Authority: FAP111-43-00-L
Telephone: 502-564-6749	Issued By: Sherry Kefauver

CONTRACTOR

CONLIFFE SANDMANN AND SULLIVAN
 325 W MAIN ST STE 2000
 WATERFRONT PLAZA
 LOUISVILLE KY 40202
 US

Line	CL Description	Due Date	Quantity	Unit Price	Contract Amt	Total Price
1	Legal Counsel for contract dispute 2/8/10-6/30/10		0.00	0.00000	115,000.00	115,000.00

Extended Description

Per LRC Policy Statement 99-1 (<http://www.lrc.ky.gov/statcomm/contracts/policies/ps99-1A.docx>): Partner-\$125 per hour; Associate-\$100 per hour; and Paralegals-\$40 per hour

Reimbursement of approved expenditures.

BIL TO

318133
 PERS OFC OF ADMIN & LEGAL SVCS
 501 HIGH STREET
 STATE OFFICE BUILDING 3RD FLOOR
 FRANKFORT KY 40601
 US

S P O

221608
 PERSONNEL CABINET ADM SERV
 501 HIGH STREET
 STATE OFFICE BUILDING 3RD FLOOR
 FRANKFORT KY 40601
 US

Total Contract Amount:	115,000.00
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REQUEST FOR PROPOSAL

**To Serve as Legal Counsel on behalf of the Personnel Cabinet relating to the
Kentucky Human Resource Information System (KHRIS) Contract Dispute with IBM**

**Personnel Cabinet
RFP 790 1000000214**

This document constitutes a Request for Proposals for a Personal Service Contract from qualified individuals and organizations to furnish those services as described herein for the Commonwealth of Kentucky, **Personnel Cabinet**.

Pursuant to KRS 45A.695, the Office of Legal Services within the Personnel Cabinet seeks proposals from legal entities to represent the Commonwealth, as more fully explained herein, in a dispute with IBM regarding the contract interpretation and project management of a large human resources system.

Please be advised that the Cabinet reserves the right to reject all proposals and not issue a contract. Further, this Request for Proposals is subject to the availability of funds.

I. DESCRIPTION OF SERVICES REQUIRED

Eligibility Requirements and Specific Services:

The Personnel Cabinet requires the services of a qualified law firm, licensed to do business in Kentucky with experienced attorneys who are admitted to practice law in Kentucky.

The Commonwealth and IBM have agreed to voluntarily engage in mediation in hope of resolving outstanding contract disputes related to the Kentucky Human Resources Information Systems (KHRIS) project. A mediation date likely will occur in late February 2010. The contracted firm must be willing and able to represent the Commonwealth at this mediation, with the ability to grasp and detail the merits of the dispute during the mediation. Therefore, immediate attention to this matter by the contracted firm is required. The Commonwealth estimates that the mediation will last for two full days and that timely preparation will be essential.

The successful responder to this RFP also will be responsible for assisting in the selection of a mediator. The mediator must have the approval of both parties (IBM and the Commonwealth), and the intent is for each party to pay one-half of the total cost for said mediator. The successful responder to this RFP will pay the Commonwealth's portion and be reimbursed via the contract.

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Additionally, other services will include: 1) full representation on behalf of the Personnel Cabinet pertaining to the current dispute or future disputes with IBM; 2) providing legal guidance and advice to the Personnel Cabinet related to the KHRIS contract dispute with IBM; and 3) providing legal guidance and advice to the Personnel Cabinet related to the relationship of outstanding issues with the IBM contract and interplay with software, quality assurance, and project oversight.

Performance Period:

The initial period for this services contract shall be from the date of signature of the Secretary of Finance and Administration and filing with the Government Contract Review Committee through June 30, 2010. If desired by both parties, and necessary due to outstanding issues remaining, the contract is renewable for additional two (2) year periods, and subject to the standard renewal terms and conditions for personal service contracts.

II. CRITERIA

1. Experience---80%.

Please detail respondent's experience in handling complex contract/project management litigation. Your response should include but not be limited to the type of representation in which you are typically involved (plaintiff/defendant), percentage of your practice concentrated in this area, litigation, mediation, and trial experience, prior clients represented in related cases, successful outcomes, any experience with ERPs, and any other factor that you deem relevant for the Cabinet's consideration.

2. Organizational Capability---20%.

Please describe your legal entity's ability to manage complex litigation. In your response, please include but not necessarily limit yourself to the following items: the number of employees at respondent's place of business, the names of the individuals expected to perform the legal services on this matter and a brief statement of the role and experience of each individual expected to perform said work.

III. FEE SCHEDULE

Please note the fee guidelines set out by the Legislative Research Commission (<http://www.lrc.ky.gov/statcomm/contracts/policies/ps99-1A.docx>). The guidelines are as follows: \$125.00/hour--Partner, \$100.00/hour—Associate; \$40/hour---Paralegal. The Cabinet reimburses certain expenses. These expenses and other expense related issues will be addressed in a contract between the parties.

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*Please note that an authorized agent **MUST** complete and sign the Solicitation form. **Failure to sign shall render the bid invalid.***

Electronic or Facsimile proposals shall not be considered.

IV. GENERAL INFORMATION

Respondents are advised that any personal service contract resulting from this Request for Proposals for Personal Service Contract must comply with all applicable provisions of KRS 45A and KRS 12.210 prior to becoming effective.

The Commonwealth reserves the right to request additional information as may reasonably be required for selection, and to reject any proposals for failure to provide additional information on a timely basis.

A contract, based on this RFP, may or may not be awarded. Any contract award from this RFP is invalid until properly approved and executed by the Finance and Administration Cabinet.

Notification of Award - To view the Award of Contract(s) and the Contractor(s) receiving the Award(s) for this Solicitation, access the **E-Procurement Directory** at <http://eprocurement.ky.gov>. The Award(s) information can be accessed by clicking on the View Awards link under the Procurement area located on the top of the center column of the E-Procurement Directory homepage. It is the vendor's responsibility to review this information in a timely fashion. No other notification of the results of an Award of Contract will be provided.

Questions regarding this RFP - Questions must be submitted in writing to the Personnel Cabinet contact named in this RFP. The Commonwealth will respond to salient questions in writing by issuing an Addendum to the Solicitation. The Addendum shall be posted to the Commonwealth's E-Procurement page.

Access to Solicitation, RFP and Addenda - The Solicitation, the RFP and Attachments and any Addenda shall be posted to the E-Procurement Directory at <http://eprocurement.ky.gov>

It is the vendors' responsibility to assure they have obtained copies of all information and forms.

Proprietary Information – The RFP specifies the format, required information, and general content of proposals submitted in response to the RFP. The Personnel Cabinet shall not disclose any portions of the proposals prior to contract award to anyone outside the Personnel Cabinet, the Finance and Administration Cabinet, representatives of the Federal Government, if required, and the members of the evaluation committees. After a contract is awarded in whole or in part, the Personnel Cabinet shall have the right to duplicate, use, or disclose all proposal data submitted by Vendors in response to this RFP as a matter of public record. Although the

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Commonwealth recognizes the Vendor's possible interest in preserving selected data which may be part of a proposal, the Commonwealth must treat such information as provided by the Kentucky Open Records Act, KRS 61.870 et sequitur.

Informational areas which normally might be considered proprietary shall be limited to individual personnel data, customer references, selected financial data, formulae, and financial audits which, if disclosed, would permit an unfair advantage to competitors. If a proposal contains information in these areas that a Vendor declares proprietary in nature and not available for public disclosure, the Vendor shall declare the inclusion of proprietary information and shall noticeably label as proprietary each sheet containing such information. Proprietary information shall be submitted under separate sealed cover marked "Proprietary Data". Proposals containing information declared by the Vendor to be proprietary, either in whole or in part, outside the areas listed above may be deemed non-responsive to the RFP and may be rejected.

Additional Requirements – Vendors should review and comply with the general bidding requirements listed under "Laws, Policies and Procedures" and "Standard Attachments and General Terms" located on the eProcurement Web page at <https://eprocurement.ky.gov>.

Certification Regarding Debarment and Suspension

In accordance with Federal Acquisition Regulation 52.209-5, the Vendor shall certify, by signing the Solicitation, that to the best of its knowledge and belief, the Vendor and/or its Principals is (are) not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any State or Federal agency.

"Principals", for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of subsidiary, division, or business segment, and similar positions.

Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award, shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. The Solicitation and all attachments thereto.
4. PSC1 Personal Service Contract Clauses;
5. Any Best and Final Offer;
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation;
7. The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

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V. RESPONSES

Electronic or Facsimile Proposals shall not be accepted.

Proposals submitted in response to this Request for Proposals for a Personal Service Contract must be received in hardcopy form **no later than 4:30 p.m. Eastern Daylight Savings Time on Friday, January 22, 2010.** Proposals which arrive after this date and time shall not be considered for an award of contract, unless: a) no bids are received other than the late bid; and b) the need of an agency is determined to preclude the re-solicitation of bids; and c) the offer is evaluated and found to be in the best interest of the Commonwealth.

One (1) marked Original Proposal and seven (7) copies shall be submitted to:

**Walt Gaffield, Executive Director
Personnel Cabinet
501 High Street, 3rd Floor
Frankfort, KY 40601**

VI. RESTRICTIONS ON COMMUNICATIONS

The Contract Contact named below shall be the sole point of contact throughout the procurement process. All communications, oral and written (regular mail, express mail, electronic mail, or fax), concerning this procurement shall be addressed to:

**Walt Gaffield, Executive Director
Personnel Cabinet
501 High Street, 3rd Floor
Frankfort, KY 40601
(502) 564-7430
Fax: (502) 564-7603
E-mail: Walt.Gaffield@ky.gov**

From the issue date of this RFP until a Contractor(s) is selected and the selection is announced, Offerors are not allowed to communicate with any Commonwealth Staff concerning this RFP except:

- ✎ The Contract Contact cited in this RFP; or
- ✎ Via written questions submitted to the Contract Contact

For violation of this provision, the Commonwealth shall reserve the right to reject their proposal response.

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ITEMS THAT SHALL BE SUBMITTED WITH YOUR BID

1. SIGNED SOLICITATION INCLUDING YOUR CORRECT ADDRESS, REMIT TO ADDRESS AND FEDERAL TAX IDENTIFICATION NUMBER.
2. SIGNED ADDENDUMS (IF APPLICABLE)
3. SIGNED AND NOTARIZED REQUIRED AFFIDAVIT FOR BIDDERS OR OFFERORS (AVAILABLE AT THE FOLLOWING LINK):
<http://eprocurement.ky.gov/attachments.htm>

PSC Standard Terms and Conditions

Whereas, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

Whereas, the second party, the contractor, is available and qualified to perform such function; and

Whereas, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

NOW THEREFORE, the following terms and conditions are applicable to this contract:

Effective Date:

This agreement is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC").

Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

Renewals:

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC

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Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

LRC Policies:

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (<http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm>) and would impact any contract established under KRS 45A.690 *et seq.*, where applicable.

Choice of Law and Forum:

All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

Cancellation:

The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

Funding Out Provision:

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

Authorized to do Business in Kentucky:

The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

Invoices for fees:

The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

Travel expenses, if authorized:

The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

Other expenses, if authorized herein:

The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an

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out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

- ✎ Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.
- ✎ Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.
- ✎ Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

Purchasing and specifications:

The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he" is construed to mean any person with an interest therein.

Conflict-of-interest laws and principles:

The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

Campaign finance:

The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

Certification:

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The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract". The contractor, as defined in KRS 45A.030(9), agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the services.

Protest

Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. **A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:**

Jonathan Miller, Secretary
Commonwealth of Kentucky
Finance and Administration Cabinet
Room 383, New Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601
Phone #: (502) 564-4240
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

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Social security: (check one)

_____ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

_____ the parties are cognizant that the state is liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

Violation of tax and employment laws:

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

_____ The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached.

Discrimination:

Discrimination (because of race, religion, color, national origin, sex, age, or disability) prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

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1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age or disability.

3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

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7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

END OF RFP

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Approvals:

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between parties and that they accept the terms of the agreement.

Personnel Cabinet:

Signature Title

Printed Name Date

Vendor:

Signature Title

Printed Name Date

Approved as to form and legality:

Personnel Cabinet Attorney